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10 Attorney for Plaintiffs
11 Israel Garcia, Jr.

12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 Israel Garcia, Jr.,

Case No.

15 Plaintiff,

16 V.

17 Credit One Bank, N.A.

18 Defendant.

**COMPLAINT FOR DAMAGES FOR VIOLATION
OF THE TELEPHONE CONSUMER PROTECTION
ACT, 47 U.S.C. § 227**

JURY TRIAL DEMANDED

INTRODUCTION

19 Plaintiff Israel Garcia, Jr. brings this complaint against Credit One Bank, N.A., for repeated
20 violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227.

NATURE OF ACTION

- 21
22
23 1. Plaintiff alleges that Defendant called his prepaid cellular telephone number using an
24 automatic telephone dialing system as defined by the Telephone Consumer Protection Act, 47
25 U.S.C. §227 and/or artificial, prerecorded voice without his express consent to do so.
26
27
28

- 1 2. Defendant was informed on several occasions to not call Plaintiffs' cellular telephone and
2 should be fully aware that Defendant had no prior express or implied consent to call the
3 cellular telephone.
4
5 3. Plaintiff alleges that the Defendant has acted voluntarily, intentionally and under its own free
6 will and knew or should have known that Defendant was engaged in acts that constitute
7 violations of the TCPA.

8 **JURISDICTION AND VENUE**

- 9 4. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 47 U.S.C. § 227(b)(3).
10
11 5. This Court has jurisdiction over Defendant pursuant to 28 U.S.C. §1391b because Defendant
12 engages in business within this state.
13
14 6. Venue is proper pursuant to 28 U.S.C. §1391b and 47 U.S.C. §227(b)(3).

14 **PARTIES**

- 15 7. The Plaintiff in this lawsuit is Israel Garcia, Jr., a natural person and a resident of Ellis County,
16 Texas.
17
18 8. The Defendant in this lawsuit is Credit One Bank, N.A. (CREDIT ONE), organized pursuant to
19 the laws of the State of Nevada, and a company with its principal office at 585 Pilot Road, Las
20 Vegas, Nevada 89119.

21 **FACTUAL ALLEGATIONS**

- 22 9. On or about March 17, 2017, CREDIT ONE began calling the Plaintiff's prepaid cell phone
23 number that ends with 9257 from telephone numbers (862) 772-8883, (862) 214-2266, and
24 (862) 772-8934 which are numbers known to be used by CREDIT ONE.
25
26 10. Defendant CREDIT ONE called Plaintiff's prepaid cell phone number ends with 5486 a total
27 of 136 times.
28

1 11. Plaintiff took photos of the display of his phone after each call that the Defendant made to his
2 cell phone.

3 12. Plaintiff made notes of the details of each call at or near the time of the call.

4 13. At the times that all the above identified calls were received on his wireless phone Plaintiff
5 was the subscriber to the called number, was the sole person having custody and control of the
6 phone and paid for the airtime for the called number.
7

8 14. In placing each telephone call CREDIT ONE used a telephone dialing system with the capacity
9 to automatically dial Plaintiff's cell phone and there was no person on the line when the call
10 was answered, then CREDIT ONE abruptly hung up on the plaintiff.
11

12 15. Upon information and belief, the telephone calls identified above were placed to Plaintiff's
13 wireless phone number using an automatic telephone dialing system (ATDS) that had the
14 capacity to store numbers.

15 16. Upon information and belief, Defendant intended to use an automatic telephone dialing system
16 to place each of the telephone calls identified above.
17

18 17. Upon information and belief, Defendant had knowledge that it was using an automatic
19 telephone dialing system to place each of the telephone calls identified above.

20 18. Upon information and belief, Defendant placed the telephone calls to Plaintiff identified above
21 voluntarily.
22

23 19. Upon information and belief, Defendant placed the telephone calls to Plaintiff identified above
24 under its own free will.

25 20. At no time has the Plaintiff given his express consent, written or otherwise, to CREDIT ONE
26 to call his cellular telephone number ends with 5486.

27 21. All calls made to Plaintiff's cell phone were for a non-emergency purpose.

28 22. Plaintiff has no prior or present established business relationship with CREDIT ONE.

23. Plaintiff has sustained concrete and particularized injuries in several ways:

- a. His phone was tied up by these unwanted calls.
- b. His privacy was invaded.
- c. Repeated, unwanted and illegal calls caused him frustration and annoyance.
- d. He incurred actual damages in the form of airtime usage, interruptions of his time receiving these calls, and expending money, time and energy to notify the Defendant, as well as the cost of electricity used and wear and tear on his phone because of the calls.
- e. He was charged for the calls (out of pocket cellular airtime minutes).
- f. On February 10, 2014, Plaintiff sent a Notice of intent to sue to CREDIT ONE regarding the violations alleged herein. Plaintiff, in doing so, was making an attempt to mitigate damages prior to litigation. CREDIT ONE failed to respond or correct their actions.
- g. All violations complained of herein occurred within the statute of limitations of the applicable federal statute.

COUNT I
VIOLATIONS OF THE TCPA 47 U.S.C. § 227(b)(1)(A)(iii)

28. Plaintiff repeats and re-alleges each allegation stated above.

29. Defendant's conduct described above violated the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

1. Adjudging that Defendant violated the TCPA 47 U.S.C. § 227 *et seq.*
2. Awarding Plaintiff statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B)(C) of \$500 for the second call (the first call falling under the safe harbor provision Ruling of the FCC) and

1 \$1500 for each call thereafter made to Plaintiff's wireless phone as knowing and/or willful
2 violations;

- 3 3. Awarding Plaintiff all costs incurred in this action;
4 4. Awarding Plaintiff any post-judgment interest as may be allowed under the law;
5 5. Awarding such other and further relief as the Court may deem just and proper.
6

7 **DEMAND FOR TRIAL BY JURY**

8 Plaintiff is entitled to and hereby demands a trial by jury.

9 Dated: February 2, 2018.

CRAIG K. PERRY & ASSOCIATES

10
11 /s/ Craig K. Perry
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